IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.457 OF 2005

Mr. Sayed Furquaan ... Petitioner

Vs.

Mr. Paranjay P. Desai ... Respondent

Mr. G.G. Singh with Mr. S.P. Pandey for the petitioner.

Mr. E.K. Sasidharan for the respondent.

CORAM: SMT. RANJANA DESAI, J.

DATED: 8TH FEBRUARY, 2005.

P.C.:-

1. In this petition, there is a challenge to the order dated 12/1/2005 passed by the Additional Commissioner, Konkan Division, Mumbai, rejecting the revision application filed by the petitioner herein.

2. Admittedly, the leave and licence agreement was executed between the petitioner and the respondent on 7/2/2003 for a period from 7/2/2003 to 6/1/2004, i.e. for 11 months. The respondent issued notice to the petitioner to vacate the suit premises on 6/7/2003 and 5/12/2003. However, the petitioner did not vacate the suit premises. Even after the expiry of the licence period, he did not vacate the suit premises. He asked for extension of time and did not even pay the compensation. Hence, an application came to be filed by the respondent before the competent authority for eviction of the petitioner under section 43 of the Maharashtra Rent Control Act, 1999 (for short, "the said Act"). In those proceedings, the petitioner made an application for leave to defend the proceedings, which

was rejected by the competent authority on 27/4/2004 as it was time barred. Considering the fact that execution of leave and licence agreement was admitted and other circumstances on record, the competent authority by its order dated 27/4/2004 allowed the application. The petitioner carried a revision to the Additional Commissioner, Konkan Division, Mumbai, which also came to be rejected. Hence, this writ petition.

3. In my opinion, no interference is called for with the impugned order. It is contended that service of summons was effected on 16/2/2004 and the petitioner's advocate filed his appearance on 2/4/2004, which is, in fact, the application for leave to defend. It is contended that the said application was wrongly rejected. I am unable to accept this submission. The Additional Commissioner, Konkan Division, Mumbai has quoted section 43(4)(a) of the said Act and has rightly stated that the said application is not in terms of section 43(4)(a) of the Rent Act, which requires that within thirty days from the date of receipt of summons, the licensee should file an affidavit stating grounds on which he seeks to contest the application for eviction and should obtain leave from the competent authority to defend. In the letter dated 20/3/2004, there are no averments which indicate any grounds on which the petitioner wanted to contest the application for eviction. Such a letter can never be termed as an application for leave to defend. So far as his application for leave to defend dated 2/4/2004 is

concerned, it was beyond the prescribed period of thirty days and, therefore, rightly rejected as there is no provision for condoning delay.

4. The conduct of the petitioner must also be noted. After expiry of the licence period, the petitioner did not vacate the suit premises. He has not even paid the compensation amount. He is in huge arrears. In the circumstances, no interference is warranted with the concurrent findings of the courts below in my writ jurisdiction. The petition is therefore, rejected.

(SMT. RANJANA DESAI, J.)